REMARKS

The present remarks are in response to the Office Action dated December 23, 2008, in which the Office Action issued a rejection of claims 50-62. In this response, Applicant has amended the claims, responds to the present Office Action with detailed comments to overcome the rejections, and respectfully requests that the pending claims be placed in a state of allowance. No new matter has been added.

A. Withdrawal of Finality of Rejection

In the Final Office Action, the Examiner finally rejected claims 50-62. If an Applicant files a Request for Continued Examination (RCE) in a timely manner as set forth in 37 CFR 1.17(e) with a submission, the Office will withdraw the finality of any Office Action to which a reply is outstanding and the submission will be entered and considered. See 37 CFR 1.114(d). Although the Applicant disagrees with the Examiner's grounds for rejection, the Applicant has modified the independent claims 50 and 57 to include claim amendments that Applicant submits overcome the Examiner's rejection.

Firstly, the Applicant's independent claims 50 and 57 have been amended to include an active state, in which the wireless communication device is powered up but is not connected to the wireless communication network. Support for this limitation is provided in *inter alia* Paragraphs [0030], [0032], and [0036] in the associated Published Patent Application 2002/0165000.

Secondly, the Applicant's independent claims have been amended to include the proxy server for transmitting presence information to the instant messaging service, after receiving login information associated with the instant messaging service, wherein the login information is communicated from the wireless communication device. Support for this limitation is provided in *inter alia* Paragraphs [0032] and [0042] in the associated Published Patent Application 2002/0165000.

Thirdly, the Applicant's independent claims have been amended to include the proxy server configured to maintain the presence information ... , when the wireless communication device is in the active state. Support for this limitation and

the presence information is provided in *inter alia* Paragraphs [0030] and [0032] through [0035] in the associated Published Patent Application 2002/0165000.

Thus, the Applicant respectfully submits that substantive claim amendments have been made to the RCE. In view of the amendments and changes to the claims, the Applicant requests that the Examiner withdraw the finality of the Office Action and place all claims in a condition of allowance.

B. Indefiniteness Rejections (35 U.S.C. § 112)

The Examiner has rejected independent claims 50 and 57 under 35 U.S.C. §112 second paragraph, as being indefinite. The Examiner argues that the term "online" is used to mean "not connected" while the accepted meaning is "connected." The Examiner argues that the term "online" is indefinite because the specification does not clearly define the term. As argued previously, Applicant respectfully disagrees.

Regardless, to expedite the prosecution of this patent application, the Applicant has amended the independent claims to overcome this rejection. More particularly, the Applicant has removed reference to "on-line" and amended the claims to describe an active state, in which the wireless communication device is powered up but is not connected to the wireless communication network. Applicant respectfully submits that this clarifies the Examiner's rejection of the term online.

C. Obviousness Rejections (35 U.S.C. § 103)

The Examiner has rejected claims 50-56 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,714,793 issued to Carey et al. (hereinafter referred to as "Carey") in view of U.S. Patent No. 6,564,261 issued to Gudjonsson et al. (hereinafter referred to as "Gudjonsson"). The Examiner has also rejected claims 57-62 under 35 U.S.C. §103(a) as being unpatentable over Carey in view of Gudjonsson and U.S. Patent Publication 2003/0018704 to Polychronidis et al. (hereinafter referred to as "Polychronidis"). The Examiner then continues with a rejection of the independent claims 50 and 57 under 35 U.S.C. §103(a) as being unpatentable over Carey in view of U.S. Patent No. 7,043,538 to Guedalia et al. (hereinafter referred to as "Guedalia"). The Examiner further argues that

independent claims are unpatentable over Carey in view of U.S. Patent No. 7,020,658 to Chen et al. (hereinafter referred to as "Chen"). Again, the Applicant respectfully disagrees with the Examiner's grounds for rejection.

Firstly, claim 56 depends on claim 50 and adds "wherein the proxy server receives an indication that the wireless communications device is in an inactive state, and wherein the proxy server removes the substitute proxy server presence upon receipt of the indication that the wireless communications device in the inactive state." The Action alleges that Carey teaches this limitation; however, if Carey does not teach the substitute proxy presence of claim 50, as admitted in the Action, then it cannot teach this additional limitation of claim 56. Again, Applicant respectfully requests withdrawal of the rejection of claim 56, or at least a responsive communication.

Secondly, Applicant submits that there are deficiencies in the cited references. The most recent Examiner's Action states:

> Carey does not specifically disclose having the feature even when a data connection does not exist between the wireless communication device and the wireless network.

The Examiner then continues by stating that this limitation was well known in the art and cites the teachings of Gudjonsson as evidence in support of his opinion.

A close examination of Gudjonsson reveals that it does not in fact support the Examiner's opinion. Rather, Gudjonsson fails to cure the deficiencies of Carey. The sections (col. 7, line 53 - col. 8, line 30; col. 8, lines 53-65, col. 11 lines 32-64) of Gudjonsson merely teach connection servers (col. 8, lines 19-21) that provide services such as: storing "presence data" associated with a user on a database (col. 8, lines 54-56), publishing dynamic user status information to indicate "whether the user is currently online on his/her PC or not" (col. 8, lines 57-60), and providing users with the ability to check whether other users connected to the same connection servers are online (col. 8, lines 61-63).

Gudjonsson repeatedly emphasizes the need for the devices to be connected in order to establish, maintain, and monitor presence information. For example, at column 2, lines 20-22, Gudjonsson states "status is usually defined as whether a

user is currently connected to the network or not."

Column 7, line 53 to column 8 line 3D, and more specifically col. 8, lines 18-23, state "[e]xternal users 7 and their respective client devices 11 ... can connect to services within the cluster via a special connection service, that typically runs on serve(s) (connection servers) at the boundary of the cluster's firewall 9, and listens for connections on a specific port."

Column 8, lines 53-56, state that the user (not a proxy for the user) has "the ability to define arbitrary sets of data related to that identity ... and this data is referred to herein as "presence" data of the user."

Column 11, lines 32-64, and more particularly lines 38-39, state "the client 11 connects to the corresponding server 3 and establishes a secure connection with it."

Nowhere, and certainly not in the text cited in the action, does Gudjonsson disclose maintaining presence for a user even when that user is not connected. Gudjonsson discloses at column 3, lines 14-17 that "the routing service allows users to send invitations to other users to establish an arbitrary communication session ... over arbitrary networks." But even here it does not say that the routing service or a server will maintain presence on behalf of a user even when that user is not connected. Accordingly, Carey and Gudjonsson, alone or in combination, do not teach all of the limitations of claim 50, nor does Gudjonsson provide any motive to modify the teachings of Carey to achieve the invention as claimed in claim 50.

Regardless, to expedite the prosecution of this patent application the Applicant has amended the claims as described above. The reference to "on line" has been replaced with reference to an "active status," in which the wireless communication device is powered up but is not connected to the wireless communication network. Applicant respectfully submits that an active state is not taught by Carey. Additionally, for the reasons stated above, Applicant respectfully submits that Gudjonsson does not teach Applicant's active state.

Applicant has further amended the independent claims to include the proxy server configured to maintain the presence information, when the wireless communication device is in the active state and the proxy server for transmitting presence information to the instant messaging service, after receiving login

information associated with the instant messaging service, wherein the login information is communicated from the wireless communication device.

Thus, Applicant's limitations have coupled the user log-in process with enabling the instant messaging service and maintaining the presence information (on the proxy server) when the wireless communication device is in an active state. Applicant submits that this combination is not taught by Carey or Gudjonsson.

With respect to Polychronidis as applied to claims 57-62, the Applicant respectfully submits that Polychronidis merely teaches a push or pull agent that accepts queries for presence/location information from an application (See pg. 3, paragraph 34-35, 37). The pull agent then queries the Home Location Register (HLR) of the wireless network for the requested information, and relays this information to the application. In view of Applicant's claim amendments, Applicant respectfully submits that Polychronidis is inapplicable.

With respect to Guedalia as applied to claims 50 and 57, the Applicant respectfully submits that Guedalia merely teaches a presence server that "maintains an active session" with an external server (i.e., instant messaging service) even when a user is disconnected from the presence server (col. 5, lines 4-10). There is no teaching or suggestion in Guedalia that the presence server "actively" transmits presence information to the external server (i.e., instant messaging service) to fool it into thinking that the user (i.e. wireless communications device) is online even when he/she is disconnected from the presence server. Applicant respectfully submits that an "active state" maintained by the presence server cannot be inferred to mean that the presence server is actively transmitting presence information to the external server when the user is logged into the instant messaging server and the wireless communication device is in active state, in which the wireless communication is powered up but is not connected to the wireless communication network.

With respect to Chen, the cited sections of Chen (col. 1, lines 63-65 and FIGs 1 and 4) merely teach that a proxy server can facilitate the transmission of SMS messages. Chen is completely silent as to the proxy server having any capability of actively transmitting presence information to the one or more of the network servers to indicate that the wireless device is online even when the wireless device is disconnected from the proxy server.

Therefore, Applicant respectfully submits that Carey, Gudjonsson, Polychronidis, Guedalia, and Chen are silent on the claimed "active state," in which the wireless communication device is powered up but is not connected to the wireless communication network; the proxy server configured to maintain the presence information, when the wireless communication device is in the active state; and the proxy server for transmitting presence information to the instant messaging service, after receiving login information associated with the instant messaging service, wherein the login information is communicated from the wireless communication device.

D. Conclusion

In view of all of the foregoing, claims 50-62 overcome the Office Action rejections herein and are now patentably distinct and in condition for allowance, which action is respectfully requested. If necessary, applicant requests, under the provisions of 37 CFR 1.136(a) to extend the period for filing a reply in the above-identified application and to charge the fees for a large entity under 37 CRFR 1.17(a). The Director is authorized to charge any additional fee(s) or any underpayment of fee(s) or credit any overpayment(s) to Deposit Account No. 50-3001 of Kyocera Wireless Corp.

Respectfully Submitted;

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